

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	.	Chapter 7
Rahul Dev Manchanda,	.	
Debtor.	.	Bankruptcy #23-22095 (SHL)
.....		
Senderoff,	.	
Plaintiff,	.	
v.	.	
Manchanda,	.	
Defendant.	.	Adversary #23-07008 (SHL)
.....		

White Plains, NY
August 17, 2023
11:25 a.m.

APPROVED FOR ZOOM HEARING

TRANSCRIPT OF:

STATUS CONFERENCE

DOC. #47 MOTION TO QUASH A SUBPOENA

ADVERSARY PROCEEDING: 23-07008-SHL SENDEROFF V. MANCHANDA PRE-
TRIAL CONFERENCE

ADVERSARY PROCEEDING: 23-07008-SHL SENDEROFF V. MANCHANDA DOC.
#19 MOTION TO DISMISS ADVERSARY PROCEEDING

ADVERSARY PROCEEDING: 23-07008-SHL SENDEROFF V. MANCHANDA DOC.
#22 MOTION TO AMEND COMPLAINT

BEFORE THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:**For The Debtor:****Rahul Dev Manchanda
Pro Se Debtor****For the IRS and the SBA:****Dana Walsh Kumar, Esq.
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1 THE COURT: I think the next case that's on is Rahul
2 Dev Manchanda, and it's a Chapter 7 case. So, I did receive
3 Mr. Manchanda's letter request to handle this matter by Zoom.
4 And given the reasons explained in the letter, I was happy to
5 agree to that. So, let me get appearances. So let me find
6 out who is here. Is Mr. Manchanda here?

7 MR. MANCHANDA: Yes, Your Honor. I'm here.

8 THE COURT: All right, good morning.

9 MR. MANCHANDA: Yes, Judge.

10 THE COURT: The United States Trustee's Office is
11 here?

12 MR. ZIPES: Yes. Good morning, Your Honor. Greg
13 Zipes with the U.S. Trustee's Office.

14 THE COURT: All right. And counsel for Mr.
15 Senderoff and the Adversary Proceeding? You're on mute,
16 counsel.

17 MR. DRUCKMAN: Michael Druckman for Douglas
18 Senderoff. Michael Druckman --

19 THE COURT: (Inaudible).

20 MR. DRUCKMAN: -- for Douglas Senderoff.

21 THE COURT: All right, I heard you just fine then.
22 Thank you very much. Anyone else who's here for this case?

23 MS. KUMAR: Yes, Your Honor. Dana Kumar from the
24 U.S. Attorney's Office on behalf of the IRS and the SBA.

25 THE COURT: All right, good morning to you. All

1 right. I think that's everyone. So, I know we have some
2 things to deal with in the Adversary Proceeding. But I
3 thought, at first, we'd talk about the case, the bankruptcy
4 case itself on status. I know there were requests for
5 information. We had a couple of hearings and a couple of
6 follow-up conversations, and the parties were talking the last
7 time we were here. And so, I know the parties that had
8 requested information were the U.S. Trustee's Office and the
9 United States Attorney's Office.

10 And so I thought since it was their requests, I'd start
11 with them first to see the status of any of those things and
12 things that we might -- or we need to talk about on those --
13 on that just as a matter of status. And then I'll hear from
14 Mr. Manchanda on that, and then we can eventually turn to the
15 Adversary Proceeding. So, Mr. Zipes, perhaps you could start
16 us off.

17 MR. ZIPES: Your Honor, Greg Zipes with the U.S.
18 Trustee's Office. Your Honor, we have been engaged with the
19 Debtor in obtaining information in response to the 2004
20 applications. And among other things, we received information
21 from the Debtor on -- in July. And we, in keeping with our
22 protocol, we've Bates stamped those documents and sent them
23 back to Mr. Manchanda with a chart that, hopefully, describes
24 where each document response fits into our document requests
25 by number.

1 And, Your Honor, I believe Mr. Manchanda would --
2 Manchanda -- I don't want to speak for him, but I think that
3 he would say that he's given us everything he thinks he has.
4 I might be wrong about that. But assuming that's the case,
5 Your Honor, I think the next step here is to have an
6 examination, at least an initial examination, to -- so that we
7 can ask questions about what was provided, get our
8 understanding of what hasn't been provided and why it hasn't
9 been provided.

10 Your Honor, this is a possible 727 Action. 727 has
11 enumerated provisions in it that include failure to provide
12 information. And, Your Honor, I'm not sure that we're there
13 yet. We're in the discovery stage, so it would be helpful to
14 have an examination at this point, which we would arrange at a
15 mutually agreeable time. I do understand Mr. Manchanda has
16 possible health issues relating to family members, and we can
17 obviously work around that as appropriate. But I think the
18 next step is an examination, assuming we have received that
19 Mr. Manchanda believes that he is required to give us.

20 THE COURT: All right, thank you very much. And Ms.
21 Kumar, anything from you?

22 MS. KUMAR: I would just echo what Mr. Zipes said,
23 Your Honor. You know, we have received the same documents,
24 and I appreciate all of the work of the U.S. Trustee's Office.
25 And to the extent then -- and chart it out so that we can see

1 if there are any gaps in there. And so assuming that Mr.
2 Manchanda does not have anything further to turn over in
3 response to the Government's request, then we agree that an
4 examination would be the next logical step. And we would, you
5 know, work with both Mr. Manchanda and Mr. Zipes to do just,
6 you know, one meeting and one examination so that we're not
7 duplicating efforts of making extra work for anyone.

8 THE COURT: All right, thank you very much. So, Mr.
9 Manchanda, a couple of things. One is sorry to hear about the
10 health issues in your family. I wish those folks all the best
11 and a speedy recovery. I know how stressful that is. To just
12 -- I may be telling you things you already know because you
13 are in the practice of law is it's generally understood, I
14 think, whether you're a bankruptcy attorney, general
15 litigation, or whatever it is, that the idea always is to get
16 all the relevant documents together before you have any kind
17 of examination of a witness, a deposition, an examination,
18 whatever you'd like to call it, when you talk to a witness.

19 And so I think the idea here is if you've given over
20 everything that you have, then folks will work with you to
21 schedule a time to have one examination in the bankruptcy
22 case. And I think the only reason Mr. -- the reason, I think,
23 Mr. Zipes is bringing that up is just to make sure to confirm
24 that just so that you didn't schedule an examination and then
25 somebody shows up. That sometimes is the case. There's

1 instances, "Oh, I have some other things I haven't given you"
2 or shows up with some additional documents, and then that
3 makes it hard to actually have one exam that's done
4 efficiently.

5 So that's just a little bit of an explanation. Again, I
6 suspect you'd know that from your own practice of law. So I
7 guess my question then for you, Mr. Manchanda, is, is it your
8 understanding that, at this point, you've given over all the
9 documents that you have?

10 MR. MANCHANDA: Yes, Your Honor. I -- you know,
11 we've scoured the barrel. And we actually just recently
12 supplemented some other financials. We've now fully complied
13 with all financial bank statements, records we were initially,
14 you know, obviously, averse to because of the attorney-client
15 privilege in my law firm and various client secrets that we,
16 you know, relented and gave it all up to date, 2022, 2023,
17 2021, 2020, 2019, as well as all tax returns, including credit
18 cards, as well as, you know, credit cards. You know, we
19 recently supplemented the credit cards a few weeks ago because
20 some of these credit card companies were not releasing data
21 because they -- we had Bruce Bronson as our former attorney.

22 They wouldn't even talk to me even though I'm the credit
23 card holder. They said, "No, unless you send us proof that,
24 you know, you're no longer represented." And I tried to send
25 in all the proofs. They still didn't relent. And actually,

1 Capital One has still to this day refused to turn over credit
2 card statements. But we did receive First Visa, I think it
3 was, and we've sent it over via e-mail to the Assistant U.S.
4 Attorney as well as Assistant Trustee Zipes by e-mail, as well
5 as to our accountant, CPA Michael Arons to possibly amend our
6 2022 tax return if it was necessary. He's currently mulling
7 that over. I don't think it's going to affect the tax return,
8 which has a negative balance, by the way, which actually
9 prompted the bankruptcy. We had a negative net gross making
10 18 or \$20,000 a year.

11 In terms of everything else, we also waived all
12 privileges, confidentiality privileges with anyone else who
13 may or may not have data that we just simply don't have. For
14 example, Bruce Bronson, our former bankruptcy attorney, has
15 already furnished the appraisers to determine the value of
16 certain things that we are putting into the case, for example,
17 the value of my watch, the value of my home. He had his own
18 contractors. We, you know, we hired Mr. Bronson (inaudible)
19 contacts and his knowledge. I don't have any data about where
20 he got that information. I wish I did.

21 But I asked Mr. Bronson, and he's one of 10 individuals
22 to provide any and all information free and clear with no
23 impediments to Mr. Zipes and Ms. Kumar. And I did that about
24 three or four months ago.

25 THE COURT: All right.

1 MR. MANCHANDA: Some of those people have complied
2 and cooperating, including Jayanthi Ganapathy, who -- of
3 FinAccurate, who actually was responsible for securing our SBA
4 loan as well as Jacob Rothman who -- of SBG Funding, who was
5 the first person to get our SBA loan, and Ms. Jayanthi just
6 did the increase. So they've provided documents, except for
7 Mr. Rothman, who hasn't even responded. The vast majority
8 have been individuals who I've been communicating to,
9 including, unfortunately, I think Mr. Bronson, who really
10 should know better because he's an active member of this
11 Court.

12 I believe he hasn't even responded to my request or the
13 U.S. Attorney and Trustee. I don't know what else to do other
14 than a Motion To Compel this Court to reach out to Mr. Bronson
15 to cooperate because we're doing everything that we can do to
16 end this case, to finish it up, to get it over with. It's
17 coming up to eight -- six, seven, eight months on this. And
18 it's really -- the stress level, as you can see, my wife is
19 now -- we're dealing with a colloidal cyst, which is a nice
20 way of saying "brain tumor." And I'm a little -- pretty
21 stressed out. I have a three-year-old son, and this is not
22 helping.

23 As you know, I've had a heart attack in August as well.
24 So this dragging on is certainly not helping. I will
25 certainly look to do, you know, I guess, an interview with

1 these two individuals. I don't know what the point of that
2 will be. We've submitted everything we can. But --

3 THE COURT: Well, just to put it in context --

4 MR. MANCHANDA: -- (inaudible).

5 THE COURT: Yes. Just to put it in context, it's a
6 common part of the bankruptcy process, so -- that's done in
7 cases. So, because the idea then is people get to ask
8 questions and sort of put -- that put the documents in context
9 and give an overall picture of things. And it's, at that
10 point, the idea is in an efficient way to kind of try to wrap
11 things up. And so -- and some Chapter 7 cases, depending on
12 the complexity of people's finances, some take longer than
13 others, and it's just a reflection of the complexity of
14 finances. So it sounds like you've given over everything you
15 have. I do appreciate very much everybody's continued
16 communication and cooperation. That's obviously reflected in
17 the conversation we're having here this morning, so I
18 appreciate that.

19 And so what I will leave you all to do is to arrange, at
20 a mutually convenient time, a time for an examination and
21 which Ms. Kumar and Mr. Zipes will coordinate so that it's one
22 examination as opposed to an examination that is requested by
23 two different parties that you would do at two different
24 times. And so it sounds like the intent is to do one, and
25 then we'll see where we are at that point. I've learned in

1 this job not to sort of try to predict the future. I don't
2 have any better success rate than anyone else. So we -- what
3 we do in bankruptcy is very focused on the process, I think,
4 as you've seen, Mr. Manchanda.

5 We sort of have a process that's set forth in the
6 Bankruptcy Code. It's not a process that's pre-formed. It's
7 all these things. Whenever you hear a reference to the Rules,
8 that really reflects what the process is. And so we're going
9 through the process. And again, I appreciate everybody's hard
10 work to get there. And obviously, the examination will be
11 arranged at a mutually convenient time. And Mr. Zipes already
12 mentioned, everybody is aware of the health issues that are
13 being faced by your family, Mr. Manchanda. You have all of
14 our best wishes, and you will figure out an appropriate time
15 to do this in light of all those other things. And so, with
16 that --

17 MR. MANCHANDA: If I may, Your Honor. I'm sorry to
18 interrupt. With all due respect, I don't remember an
19 examination under oath in the last bankruptcy that I had about
20 15 years ago. So I kind of was wondering what prompted this
21 one, especially if we've cooperated and complied --

22 THE COURT: Well --

23 MR. MANCHANDA: -- if there was anything
24 (inaudible).

25 THE COURT: There is 2004 Motions. I see those

1 pretty much every week in different cases. And there were
2 such requests here, and they inevitably request documents in
3 an examination. So it is a fairly common part of the process.
4 It's in cases that are much -- involve much less complicated
5 pictures. So there are people who don't run their own
6 business, for example.

7 That's something that adds a level of complexity to an
8 individual case. And so every case is different. And so
9 that's probably the only thing I can tell you. It's not
10 unusual at all, and I think it's probably the ordinary course
11 in cases where folks are running their own business just
12 because there's more complexity to the financial picture. All
13 right.

14 MR. MANCHANDA: Okay.

15 THE COURT: All right. So anything else on the main
16 case for anybody to discuss before we turn to the Adversary
17 Proceeding?

18 MR. ZIPES: Your Honor, it's Greg Zipes from the
19 U.S. Trustee's Office. Just two minor points. I am aware of
20 Mr. {sic} Ganapathy's documents that were sent to us. Another
21 gentleman was mentioned, and I don't know that we got those
22 documents from him. I didn't catch the name exactly, but I
23 did here Mr. Ganapathy and another one that was recently
24 obtained. So I'm just wondering if there are more documents
25 in that request or if it's reflected in Mr. Ganapathy's

1 turnover (inaudible).

2 MR. MANCHANDA: (Inaudible). If I -- may I respond?

3 THE COURT: Sure, please.

4 MR. MANCHANDA: Can I respond? Yeah. I think I
5 mentioned two other individuals. One was CPA Michael Arons of
6 Harrison, Westchester County. We did submit our 2022 tax
7 return to the opposing counsel, AUST and USA. There's another
8 individual named Jacob Rothman of SBG Funding, who was the
9 actual SBA loan originator. He actually was the one who got
10 the SBA loan back in, I think, 2020, 2021. And I guess, you
11 know, he has not even responded to anybody. And Jayanthi
12 Ganapathy of FinAccurate actually took over after, you know,
13 Mr. Rothman. There was a relationship break in that level.
14 But Jayanthi was forthcoming and provided data and
15 documentation to the fullest extent to the Trustee and the
16 U.S. Attorney.

17 But Jacob Rothman hasn't responded to either me or -- I
18 don't know if he responded to them. They can provide and
19 update. But I think they can reach out. I've listed all
20 those (inaudible) in writing in the letter to everybody
21 involved, and I've CCd the U.S. Attorney and the Trustee. So
22 they know exactly who these people are, so they can also feel
23 free to reach out. I've reached out to them. There's nothing
24 further that I can do other than go to their office and shake
25 them down for documents, and I don't think that's going to be

1 a possibility, Your Honor. I've done whatever I could at this
2 point.

3 THE COURT: All right. Thank you for that. It's
4 good to have sort of (indiscern.). One of the points of a
5 Status Conference is to have these conversations, and --
6 because letters going back and forth and e-mails going back
7 and forth at a certain point, everyone's cup runneth over. So
8 it's good to have a chance to have a conversation. And so
9 thank you for that.

10 All right. So with that, we do have the Adversary
11 Proceeding here with a Motion To Dismiss and the Motion To
12 Amend. And so let me just, in the interest of efficiency and
13 the interest of fairness, sort of share with you my thoughts.
14 I'm happy to hear from anybody on all this. But sometimes, I
15 don't want to make it more mysterious than it need to be. So
16 there's lots of discussion about incorporation of allegations
17 from one thing to another. What I think the best course of
18 action in this circumstance here is to grant the Motion To
19 Amend so that when an Answer is filed, it allows the -- Mr.
20 Manchanda, as the Defendant, to respond to each allegation of
21 the Complaint as opposed to worrying about incorporation.

22 So, my inclination would be that that's a good way to go
23 in response to Mr. Manchanda's concerns he has about
24 incorporation of some other documents and how to appropriately
25 respond. And I think that was the subject of -- one of the

1 two subjects of the motions back and forth. And I didn't see
2 any opposition to the Motion To Amend. And the second is --

3 MR. MANCHANDA: Oh, yes, Your Honor. There was an
4 opposition filed. They've missed the Statute of Limitations
5 (inaudible). There was an opposition that was filed, so I
6 would ask --

7 THE COURT: Well, that --

8 MR. MANCHANDA: -- the Court to review that.

9 THE COURT: Well, there's no Statute of Limitations
10 in a Motion To Amend. The standard, I think, is cited in the
11 papers, which is it's freely granted. And particularly, if
12 you're complaining that incorporation is inappropriate, in
13 fact, is the kind of thing I would ask a party to do. If
14 that's the concern, then I would ask them to amend the
15 Complaint and lay it all out in one document. And so given
16 that the standard under the rule is that that motion, a Motion
17 To Amend early on, the standard is it should be -- it's a
18 liberal standard, and it's granted unless there's prejudice,
19 and there wouldn't be prejudice here given that, in fact, it's
20 a request that you're making saying that incorporation is
21 making it more difficult for you to respond.

22 So the other -- or the other main point, I think, is
23 about the notion of multiple Motions To Dismiss. As I've said
24 before, the Motion To -- a Motion to -- what we don't do here
25 is rehash things that have already been argued. Once I make a

1 ruling, I make a ruling on the issue. So I thought the
2 incorporation was the one issue that in the Motion To Dismiss,
3 I thought that that had -- was an appropriate point and needed
4 to be addressed. And I think amending the Complaint is the
5 way to address it.

6 And as for the other issues, I frankly didn't see
7 anything else in the Motion To Dismiss that I thought was a
8 Motion To Dismiss issue, that is, that the status of the
9 allegations were such to not give the notice that's required
10 under notice pleadings under the applicable rules. The idea
11 is to say, well, the allegations lead people -- understanding
12 what is that's complained of. And I think I can easily
13 understand that using the Supreme Court's rulings and
14 standards, including Twombly vs. Iqbal that talks about what's
15 -- what a plausible allegation is. I think I understand it.
16 It doesn't mean it's correct or it's not correct. It's a
17 question about whether I understand the allegation, and I
18 think I -- it's sufficient that it states a claim. And I'm
19 inclined to think that they do here, particularly. And I have
20 the Motion To Amend, which will lay it all out in one
21 document.

22 So those are my initial thoughts. I just thought, in the
23 interest of efficiency and to not -- you know, Court
24 appearances are not a mystery novel. Nobody should be left
25 guessing. And I always think for certain circumstances, I

1 think it's helpful for a Court to at least share what it's
2 thinking from the get-go so that people are -- know that and
3 then can proceed. And so, with that, Mr. Manchanda, anything
4 else that you wanted to particular address in connection with
5 the Adversary Proceeding and these two motions?

6 MR. MANCHANDA: Well, as I said before you stated
7 that there was no opposition, and that's inaccurate. I would
8 ask the Court to look at that again.

9 THE COURT: I'm sorry. You are correct.

10 MR. MANCHANDA: The second thing --

11 THE COURT: I -- you are correct.

12 MR. MANCHANDA: You asked me to respond, and I'd
13 like to respond.

14 THE COURT: Yes.

15 MR. MANCHANDA: So there are other issues involved
16 here in terms of, you know, the grace period is over. You
17 know, sixty days (inaudible) --

18 THE COURT: But, again --

19 MR. MANCHANDA: -- (inaudible) --

20 THE COURT: -- I think what I said is there is no
21 grace period. There's a standard for a Motion For A Leave To
22 Amend, and --

23 MR. MANCHANDA: Right.

24 THE COURT: -- it's properly cited in the Motion To
25 Amend and it provides that leave is freely granted. And so

1 there is no -- it's not a Statute of Limitations. It relates
2 back if you want to -- this sort of is a technical matter. So
3 it's -- the period is not expired. It's subject to the
4 applicable rule, which is cited in the motion itself, which is
5 Rule 15(a), and it's cited on Argument Page 1, "Rule 15(a)
6 provides the Court should freely give leave to amend when
7 justice so requires." That's what the rule says. And it goes
8 on in the motion to correctly state the standard, which is a
9 liberal and permissive standard. And that -- so that's the
10 standard I apply in deciding whether to amend the Complaint.

11 MR. MANCHANDA: This has been going on since 2018
12 and, essentially, is one of the main reasons that we're
13 actually -- or one of the reasons that we're pursuing
14 bankruptcy because of the vexatious onslaught of litigation
15 from these people with no evidence. I don't understand why
16 they're afforded every single opportunity to keep continuing
17 to torture and harass me and my family and make us spend money
18 after six, seven years and five federal state courts but that
19 haven't shown one shred of evidence when we've provided
20 documents and data that showed that we aren't the one
21 responsible for anything. So I don't understand why this is
22 continuing to give (inaudible) extra rope --

23 THE COURT: Well, on that --

24 MR. MANCHANDA: -- (inaudible). It's vexation on
25 its face --

1 THE COURT: On that, Mr. Manchanda --

2 MR. MANCHANDA: -- and (inaudible).

3 THE COURT: On that, Mr. Manchanda, I would disagree
4 with you because I have -- all I have is what's in front of
5 me. It's a 2023 Adversary proceeding that was filed here in
6 light of the bankruptcy that you filed. And there's a clear
7 lengthy history of litigation in other courts. Based on
8 looking at the Complaint here, I don't think it's frivolous.
9 I think it states a claim. I think it states some serious
10 allegations and the merits of which we'll get to. But looking
11 at the allegations, I think they're significant and serious.
12 And so I would disagree that there's nothing here. And what's
13 been explained in the Complaint, I think, provides a basis for
14 going forward with a lawsuit. So that's all I can tell you.

15 MR. MANCHANDA: But there's also no show of
16 willfulness or maliciousness which is a requisite --

17 THE COURT: Today is not --

18 MR. MANCHANDA: -- requirement in the Bankruptcy
19 Court.

20 THE COURT: -- the trial. The Motion To Dismiss is
21 not a trial. A Motion To Dismiss is about the allegations of
22 the Complaint and whether it is sufficient to state a claim.
23 And I'm finding that --

24 MR. MANCHANDA: And that --

25 THE COURT: -- they are. And also --

1 MR. MANCHANDA: -- there's no willfulness and
2 there's no maliciousness.

3 THE COURT: -- Mr. Manchanda, this is your second
4 Motion To Dismiss, and you don't get a second bite at the
5 apple on the same issue. I've already ruled --

6 MR. MANCHANDA: (Inaudible).

7 THE COURT: -- that they're sufficient to move
8 forward. So, in that sense, the -- what is said by Mr.
9 Senderoff in the opposition is correct. We're not doing
10 seriatim Motions To Dismiss where you keep -- it -- there's a
11 Motion To Dismiss. If it's denied, it's denied. The one
12 thing I am granting is that you said you thought it was
13 problematic to incorporate the state court pleading. I'm
14 agreeing with you. They filed a Motion -- an -- a Motion To
15 Amend The Complaint to do that. That is, essentially,
16 something you have asked for to say that you didn't want to
17 have things done by incorporation.

18 So I agree that this -- it's appropriate to have it all
19 in one document. And so I will grant the Motion To Amend so
20 that it is all one document. But I find that your other
21 arguments in the Motion To Dismiss are without merit. And
22 some of them, in fact, are duplicative of arguments you made
23 before about the merits of the allegations. And so I am
24 denying them for two reasons. One is I think the allegations
25 here are sufficient to state a claim, which I've already said

1 before in your prior Motion To Dismiss. So I'm not going to
2 entertain another Motion To Dismiss on the same grounds, and
3 second is that some of the arguments you're raising are
4 arguments that go to -- when we get to the merits, which is --
5 whether that's Summary Judgment or whether that's a trial.
6 That's for another day. It's not for today. But today is
7 just about the sufficiency of the allegations.

8 MR. MANCHANDA: So I'd just like to ask -- close
9 with one final question. Where is the maliciousness or
10 wilfulness here? It's never been shown or proved.

11 THE COURT: I think for purposes of alleging a
12 claim, it is clearly stated by virtue of the things that are
13 alleged to have been posted about Mr. Senderoff by you online.

14 MR. MANCHANDA: That's a false statement. We never
15 posted anything, and they've never shown that or proved that
16 in six years.

17 THE COURT: Okay. For the last time, I am looking
18 at the allegations that are in the Complaint that are alleged
19 by Mr. Senderoff. The allegations are that there were various
20 things that you posted on the internet about Mr. Senderoff
21 that are --

22 MR. MANCHANDA: It could've been Mickey Mouse. We
23 didn't do that, and we've shown it over and over again.
24 There's no --

25 THE COURT: Okay. Mr. Senderoff --

1 MR. MANCHANDA: He has never shown that
2 (inaudible) --

3 THE COURT: Mr. Manchanda, for the last time, I am
4 going by the allegations that are contained in the Complaint
5 and whether they are sufficient to state a claim. You are
6 saying you disagree on the merits of those allegations. That
7 is not what we're here on a Motion To Dismiss to decide. That
8 is what a trial does or a Summary Judgment Motion does. That
9 is not a Motion To Dismiss. So you're asking me to look at
10 the allegations of the Complaint and say, "These allegations
11 are untrue. That is not something that a Court does on a
12 Motion To Dismiss.

13 So I am looking at the motions -- the motion -- I'm
14 sorry, the Complaint and the allegations. I find the
15 allegations to be sufficient for stating a claim. The merits,
16 the truth, or untruth, the merits of any claims here are ones
17 that will be decided when we get to that part of the trial --
18 to that part of the case, which is a trial or Summary
19 Judgment. And again, what I will have in front of me, we will
20 discuss at a future date exactly what it is that would be
21 decided here because, after all, what I think is understood
22 here is that the Complaint was filed alleging that these
23 allegations, based on the allegations in the Complaint, that
24 any claim that Mr. Senderoff has is non-dischargeable.

25 Sometimes, it can be a little difficult to figure out

1 what we're deciding in the Bankruptcy Court versus deciding
2 the underlying claims that are in state court. That's not a
3 today problem. The Complaint for purposes of non-
4 dischargeability states a claim. And so I'm going to deny any
5 request to dismiss the Complaint on that basis. And again,
6 I'm agreeing with you, Mr. Manchanda, about incorporation. So
7 I have the Motion To Amend that addresses that issue and
8 presents all the allegations in one place. And so that's what
9 we're going to do. And so that's my ruling.

10 All right. So what we need to do is set a schedule and
11 also, at a certain point, I will ask the parties to decide and
12 to inform me as to what it is that we are going to decide in
13 this case. There are different ways that this -- non-
14 dischargeability cases play out in bankruptcy. There are times
15 when folks say, "Judge, we have the question of non-
16 dischargeability." We look at the applicable non-
17 dischargeability statute, and we decide whether the conduct
18 here satisfies it or doesn't, and then if we need a trial to
19 determine what the actual conduct was or wasn't. And then we
20 do that, and we discharge -- figure out non-dischargeability
21 or not under the applicable section of the Bankruptcy Code.

22 There are times when folks say, "Well, Judge, there's
23 also an underlying Complaint that's somewhere else, and we
24 think the issues and non-dischargeability and the merits of
25 that underlying Complaint are -- have sufficient overlap that

1 we think it should be decided in one forum. And we want the
2 Bankruptcy Court to be that forum." There's no right or wrong
3 answer. What I do is I ask the parties what their views are,
4 and then we talk about it and see what's appropriate. And if
5 there's a disagreement, then we can figure out how to resolve
6 that disagreement by virtue of people submitting papers at
7 issue.

8 But I've asked parties -- I don't want to ask parties and
9 put them on the spot today because we haven't previously had a
10 conversation about that. So I just wanted to let you know
11 that's, I think, the next step because that will affect sort
12 of how the case proceeds going forward. So my thought would
13 be to have the parties think about that and the next time we
14 get together to have a conversation about that and then also
15 to set a schedule for discovery about the allegations in the
16 Complaint and to figure out what needs to happen.

17 And so my thought will be to set a date sometime probably
18 in probably the end of September to get together and to talk
19 about those two issues, what is it that we're going to decide,
20 and what is it we're not going to decide in the Adversary
21 Proceeding here in Bankruptcy Court, and two, what is a
22 discovery schedule in this adversary case that makes sense.
23 And we'll take it from there. And so, with that, let me ask
24 counsel for the Plaintiff if there's anything else that you
25 wanted to address in the context of the Adversary Proceeding

1 today.

2 MR. DRUCKMAN: Yes, Your Honor. I just have two
3 practical questions about the Motion To Dismiss and the Motion
4 To Amend. Given what you've ruled today, do you think it
5 would make sense to require a Motion For A Leave to file any
6 further Motion To Dismiss or Motion For Judgment On The
7 Pleadings --

8 THE COURT: Well, I am --

9 MR. DRUCKMAN: -- or to require --

10 THE COURT: I am making a ruling that I have now
11 opined about the sufficiency in the allegations twice. I'm
12 not going to consider -- you don't get multiple bites in the
13 apple. And so it's law of the case, and so I don't need a
14 motion to -- for me to apply that principle which exists
15 without a motion. So I wouldn't worry about that.

16 MR. DRUCKMAN: Okay. And then the second question
17 is just practically how we file the Amended Complaint. Should
18 we submit it to chambers or --

19 THE COURT: I would just --

20 MR. DRUCKMAN: -- just --

21 THE COURT: So this gets into someone's familiarity
22 and competency in terms of electronic docketing. Happily -- I
23 am not the expert. You would think maybe in my job that I
24 should be, but I'm not. Happily, there are people in my
25 chambers who are much more conversive than I am. So the idea

1 is the Amended Complaint should go on the Docket. So what I
2 would do -- and maybe one way to do that is to submit an Order
3 granting the Motion To Amend and to attach the Amended
4 Complaint.

5 And the Order would say that the Amended Complaint is
6 hereby deemed -- the attached Amended Complaint is hereby
7 deemed filed. And that's probably the cleanest way to do it.
8 There may be other ways to do it. And if you find yourself
9 stuck, you can reach out to chambers, and Ms. Ebanks or one of
10 my law clerks are likely to be a little more conversive on the
11 details in terms of I know there are events you have to link
12 to various things to file documents. But I think an Order on
13 the motion itself is one way that I think would work.

14 MR. DRUCKMAN: Okay. We'll submit that, Your Honor.

15 THE COURT: All right. Mr. Manchanda, any other
16 questions for you as to the Adversary Proceeding?

17 MR. MANCHANDA: So I'm assuming the automatic stay
18 is still in effect? It's been extended?

19 THE COURT: Well, the automatic stay is not sort of
20 the -- it is -- the Adversary Proceeding is a request to make
21 the claims -- any claims of Mr. Senderoff that are addressed
22 in it non-dischargeable. That hasn't been resolved on the
23 merits. It's -- the only thing I have resolved is whether the
24 allegations in the Complaint are sufficient to go forward, and
25 I found that they are. So right now, the automatic stay is

1 still --

2 MR. MANCHANDA: Oh. Your Honor, I'm sorry. I
3 apologize. I meant to go back to the main case in terms of --

4 THE COURT: Oh.

5 MR. MANCHANDA: -- any final questions I have.

6 THE COURT: Yes. The automatic stay still exists in
7 the case. Yes.

8 MR. MANCHANDA: Because we're having difficulty with
9 the lower courts, New York Civil. And again, I'm not a
10 bankruptcy attorney, so I wanted to put that out there. We
11 are having great difficulty making the lower court judges of
12 New York County understand that the automatic stay has been
13 extended. And it's --

14 THE COURT: Well, I don't think --

15 MR. MANCHANDA: -- causing a lot of problems.

16 THE COURT: -- it's been extended. It exists. So I
17 haven't extended it. There's an automatic stay by virtue of
18 the filing of the case under the Bankruptcy Code. Again,
19 that's -- I always talk about the Bankruptcy Code. I'm not --
20 I don't make things up here. I follow the rule book. And the
21 rule book says that when you file, you get the protection of
22 the automatic stay as the Debtor. And you have that
23 protection.

24 MR. MANCHANDA: Is there any way we could point to
25 these judges? It's happening -- I don't know if it's these

1 new judges coming in, a new crop, but it's happening probably
2 every couple of weeks. And it's to the point where even
3 though we complained and file Complaints, they're sticking to
4 it. They're saying, "Well, you know, you got a 30-day stay,
5 and it's over now." And I keep -- you know, we keep telling
6 these judges that these cases cannot continue. This is
7 actually, at the very minimum, it's harassment. But it's
8 caused us a lot of problems, and I don't really -- you know,
9 in terms of default judgment --

10 THE COURT: It's --

11 MR. MANCHANDA: -- is there anything --

12 THE COURT: Well, so it's hard for me in the sense
13 that I can't provide legal advice. So I can just sort of
14 affirmatively state what the law is. I don't know if Mr.
15 Zipes or Ms. Kumar have anything that they wanted to offer on
16 this front. I also don't know what the context is for any of
17 this. But perhaps Mr. Zipes has some sense of the context or
18 he doesn't. You may comment. You might not, Mr. Zipes. I'll
19 leave that to you.

20 MR. MANCHANDA: But (inaudible) disputes or
21 (inaudible) not really defending ourselves because we just
22 (inaudible) Court the Notice to File Bankruptcy. And then
23 they run roughshod over us. And these judges are making us
24 continue to come to Court. They're not accepting the
25 bankruptcy filing and the automatic stay notifications --

1 THE COURT: So --

2 MR. MANCHANDA: -- and they're making (inaudible)
3 over and over.

4 THE COURT: My understanding is people file with the
5 Court that sort of something that informs folks that they have
6 a bankruptcy pending. But it does depend on the lawsuit, if
7 there are other folks who are parties who are not in
8 bankruptcy. And so it's hard for me to answer that question
9 in a way other than to state affirmatively what the rule is.
10 Certainly, there's an automatic stay as to a bankruptcy
11 Debtor.

12 MR. MANCHANDA: So anything that we could point to
13 that says that the stay is in effect because that's really
14 what they're challenging, that there is no stay in effect.
15 And we're saying that it is, and you're saying that it is. Is
16 there anything without compounding the Court's work? And I
17 don't want to burden the Court. But is there anything we
18 could point to, a printout from the Court Docket or the
19 history, that it's already there? I looked at it this morning
20 and tried to highlight, you know, certain things (inaudible)
21 creditor meetings. But I don't know if that's going to be
22 sufficient to convince some of these New York County judges.
23 They're not the most sophisticated judges in the world. So --

24 THE COURT: All right. Well, they're pretty
25 sophisticated folks, so just to be clear. But hold on one

1 minute.

2 (Pause in proceedings)

3 THE COURT: So, I mean, certainly, you can get a
4 certified copy of the Docket sheet from the clerk's office
5 here that lists all the Docket entries and the continuation of
6 the case. And there are occasions when people file motions
7 for folks who are violating the automatic stay. But again, I
8 don't know the context of everything. The automatic stay, on
9 the one hand, sounds very simple. On the other hand,
10 sometimes, it can be a little more complicated in its
11 application in a case, particularly, if there's more than a
12 number of different parties as to what can go forward and what
13 can't.

14 And so you are the Debtor in this individual Chapter 7.
15 So if there are other parties that are involved in the case
16 that aren't in bankruptcy, then it is a question of how that
17 case will proceed or won't as to those other parties. So if
18 there's, say, for example, your law firm is a party or
19 something else, then things can get a little more complicated.
20 So I don't know if anybody has any other thoughts.

21 MR. ZIPES: Your Honor, it's Greg Zipes with the
22 U.S. Trustee's Office. And I'm not familiar with this
23 specific issue, but I will state generally that if a
24 counterparty or a plaintiff or someone is pursuing something
25 in state court, a remedy is possibly to bring it before this

1 Court rather than to file complaints with the bar or whatever
2 it might be. And that might be a solution, although I don't
3 know exactly what the reference is here.

4 THE COURT: Yes. I would agree with that, Mr.
5 Zipes. Thank you for that observation. There are times if
6 there's a party who is proceeding in a state court case
7 against you as a bankruptcy Debtor that you can file a motion
8 here and serve it on them. And the idea is that you get an
9 Order from the Court and, if appropriate, to say that that's
10 covered by the automatic stay.

11 MR. MANCHANDA: We've done that so many times, Your
12 Honor. That's kind of why we're --

13 THE COURT: Well, I don't have any pending motions
14 in front of me, so -- of that type. So I throw it out there
15 to the extent that that's something that, if appropriate, is
16 an option available to you. And so I appreciate Mr. Zipes
17 mentioning that. And if that's -- that is something you can
18 do as a bankruptcy Debtor if you encounter that kind of
19 problem.

20 MR. MANCHANDA: Okay.

21 THE COURT: All right. All right. With that, I
22 thought I would set another date in the case. And so my
23 thought would be to make it the end of September, September
24 27th or 26th, whatever works better for folks.

25 MR. MANCHANDA: Your --

1 THE COURT: So we'll start with the 26th. Does the
2 26th at 10:00 o'clock work?

3 MS. ZIPES: Your Honor, can you give me one moment,
4 please?

5 THE COURT: Sure.

6 MS. KUMAR: Your Honor, the 27th would actually be
7 better for me.

8 THE COURT: I'm sorry. Say that again, Ms. Kumar.

9 MS. KUMAR: The 27th would be better for me --

10 THE COURT: All right.

11 MS. KUMAR: -- if it works for everyone else.

12 THE COURT: All right. So the bidding is at the
13 27th at 10:00 o'clock if that works for folks?

14 MR. DRUCKMAN: That works for us, Your Honor.

15 THE COURT: Mr. Manchanda, does that --

16 MR. MANCHANDA: That's fine --

17 THE COURT: -- work --

18 MR. MANCHANDA: -- with me.

19 THE COURT: -- for you?

20 MR. MANCHANDA: Yes, Your Honor.

21 MR. ZIPES: And for me as well, Your Honor.

22 THE COURT: All right. So we'll make it the 27th at
23 10:00 o'clock. And in the meantime, I'll wait for Mr.
24 Druckman to submit a Proposed Order on the Motion To Amend
25 that contains a copy of the Amended Complaint, which will be

1 the operative Complaint in the case. And with that, I will
2 leave you all --

3 MR. MANCHANDA: Your Honor, one more thing.
4 (Inaudible) submit another letter asking for retro because my
5 wife, like I said, is going through a lot of battery of MRI,
6 CAT scans. It's surgery. So I will not be able to appear
7 physically. I will have to be with her every minute. She
8 can't drive. She can't do anything really at this point.

9 THE COURT: So --

10 MR. MANCHANDA: So can we extend --

11 THE COURT: -- I --

12 MR. MANCHANDA: -- that (inaudible)?

13 THE COURT: So I think today, we were able to
14 accomplish what we needed to accomplish virtually. And so I'm
15 okay with having the 27th virtually. So let's do this.

16 MR. MANCHANDA: Thank you.

17 THE COURT: At the end of every hearing, we'll sort
18 of revisit that issue. I mention it because there are times
19 when it is helpful to be in Court, but we were able to get
20 things done today effectively. And so I'm fine with the 27th
21 being virtual, and Ms. Ebanks will continue to send you all
22 the links. It sounds like it worked without any issues today,
23 and that's fine. Obviously, I appreciate and sympathize with
24 the health issues that you mentioned, Mr. Manchanda, and wish
25 your family all the best. And we'll just take it like we do

1 in cases generally. We'll take it as it comes. And so please
2 don't hesitate to bring it up at hearings, and we'll continue
3 to sort of assess as we go.

4 MR. MANCHANDA: Can we also apply that to any
5 examination under oath as well? I know that they wanted me to
6 come down there, but --

7 THE COURT: Well, I --

8 MR. MANCHANDA: -- again (inaudible).

9 THE COURT: That's a little different. And so that
10 doesn't happen in front of me. And so I'd encourage the
11 parties to talk about that. And so there are times when it
12 does make sense to do things in person because what happens is
13 you will be handing somebody a document to look at. And doing
14 things virtually will greatly extend the amount of time and
15 difficulty of doing that. So there are times when there's
16 good reasons to do that in person. And the idea is to pick a
17 time when that can be accomplished. And so my -- so it's the
18 same reason I don't hold trials remotely except when there's -
19 - it's just everything takes much longer. The record is much
20 less clear, so it's really not to anybody's benefit. So my
21 thought would be that the examination should probably take
22 place in person, but I'll let you all chat about it.

23 MR. MANCHANDA: Will they consent on the record?

24 THE COURT: What's that?

25 MR. MANCHANDA: Mr. Zipes -- would Mr. Zipes or Ms.

1 Kumar consent to doing that on the record today?

2 THE COURT: Well, I'm going to let you all have that
3 conversation. But I'm just saying I can understand that there
4 are reasons to do examinations in person, depositions,
5 examinations, call them what you will. And so I'll leave
6 parties to have that conversation. Again, it doesn't happen
7 in front of me. So --

8 MR. ZIPES: Your Honor, we heard Mr. Manchanda. And
9 so we'll consider that. We heard what he said. Your Honor, I
10 had one other point, and I know this has been a long hearing.
11 We do have an extension of time to object to discharge into
12 early September, I believe. And the Court had wanted us to
13 follow a certain procedure, get the documents first, and then
14 have the examination. And so I'm just throwing it out there
15 that we will need an extension. We would ask Mr. Manchanda to
16 consent. He can think about it if he wants, and I suppose we
17 would file a Motion To Extend Time to the extent that he
18 doesn't consent. But --

19 THE COURT: Well --

20 MR. ZIPES: -- this is --

21 THE COURT: Yes, I understand. The position is that
22 you can't make a determination on your position about
23 dischargeability until you get all the information, and that
24 includes the examination. And again, this is consistent. I
25 think this morning, I signed three extensions of time on the

1 dischargeability deadline in three other cases for exactly the
2 same kinds of circumstances. And so, Mr. Manchanda, would you
3 consent to that kind of a request?

4 MR. MANCHANDA: I see no reason not to agree to
5 that. So --

6 THE COURT: All right. I appreciate your
7 cooperation on that. It is the standard --

8 MR. ZIPES: I do as well.

9 THE COURT: -- way these things work. And again, I
10 just wanted to give a little context because I know bankruptcy
11 is not your area of practice. So it's probably the most
12 common stipulation I see in cases is exactly on this issue.

13 MR. MANCHANDA: Although it would certainly help if
14 we can have the virtual examination under oath. That would
15 certainly go a long way if they could also consent to that on
16 the record. I mean, I consented to something. If they could
17 do that as well, that would be wonderful --

18 THE COURT: All right.

19 MR. MANCHANDA: -- because I'm really having --

20 THE COURT: Well --

21 MR. MANCHANDA: -- a difficult time.

22 THE COURT: -- I will tell you that I was -- I would
23 grant the request to extend the time for non-dischargeability
24 even over an objection because I think it's appropriate
25 because they haven't finished the process. As to an

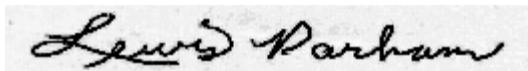
1 examination, again, I think there are pluses and minuses to
2 that. So what I heard Mr. Zipes say is that they'll -- they
3 have your request, and they're going to consider it, and
4 they'll get back to you about it. And Ms. Kumar, obviously,
5 also will weigh in on that. And I'll leave you all to chat
6 about it.

7 I think everybody is aware and sympathizes with the
8 health concerns in your family, and folks will take a look at
9 it and try to figure that out. So I'll leave you all to that.
10 So with that said, I will see you all on the 27th. That will
11 be virtual by Zoom. That's because there will be no
12 examination involved. That's just a Status Conference, and
13 we'll see where we are. And in the meantime, my best to you,
14 Mr. Manchanda, for the health of you and your family and to
15 everyone else for a good rest of the summer.

16 (Court adjourned)
17

18 CERTIFICATION

19 I, Lewis Parham, certify that the foregoing is a correct
20 transcript from the electronic sound recording of the
21 proceedings in the above-entitled matter.
22

23
24 

8/18/23

25
26
27 _____
Signature of Transcriber

Date